

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DAVID WICHTERMAN, JR., as
Administrator of the Estate of Daniel
Wichterman, deceased,
Plaintiff,**

v.

**CITY OF PHILADELPHIA,
CORIZON HEALTH,
POLICE CORRECTIONAL OFFICER
JUSTIN AVERY,
POLICE CORRECTIONAL OFFICER
WILLIAM GWALTHNEY,
TAIRU WAHABU, RN, and,
OFFICER JOYNER, BADGE NO. 114,
Defendants.**

CIVIL ACTION

NO. 16-5796

ORDER

AND NOW, this 16th day of July, 2019, upon consideration of Defendants' Motion for Summary Judgment filed by defendants City of Philadelphia, Justin Avery, William Gwaltney and Lavern Joyner (Document No. 40, filed May 31, 2018), Motion for Summary Judgment filed by defendants Corizon Health, Inc. and Tairu Wahabu, R.N. (Document No. 41, filed June 1, 2018), Plaintiff's Consolidated Response in Opposition to Defendants' Motions for Summary Judgment (Document No. 43, filed June 27, 2018), Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment filed by defendants City of Philadelphia, Justin Avery, William Gwaltney and Lavern Joyner (Document No. 47, filed July 11, 2018), and Reply Brief in Support of Motion for Summary Judgment of Defendants Corizon Health, Inc. and Tairu Wahabu, R.N. (Document No. 50, filed July 19, 2018), for the reasons set forth in the accompanying Memorandum dated July 16, 2019, **IT IS ORDERED** as follows:

1. Defendants City of Philadelphia, Justin Avery, William Gwaltney and Lavern Joyner's Motion for Summary Judgment is **GRANTED IN PART AND DENIED IN PART**, as follows:

- a. That part of City defendants' Motion seeking summary judgment on plaintiff's Fourteenth Amendment deliberate indifference claims against Avery, Gwaltney, and Joyner is **GRANTED**.
- b. That part of the City defendants' Motion seeking summary judgment on plaintiff's Fourteenth Amendment *Monell* claim against the City of Philadelphia is **DENIED**.

2. Defendants Corizon Health, Inc. and Tairu Wahabu, R.N.'s Motion for Summary Judgment is **GRANTED IN PART AND DENIED IN PART**, as follows:

- a. That part of Corizon defendants' Motion seeking summary judgment on plaintiff's Fourteenth Amendment deliberate indifference claim against Wahabu is **GRANTED**.
- b. That part of Corizon defendants' Motion seeking summary judgment on plaintiff's negligence claims against Wahabu and against Corizon based on Corizon's *respondeat superior* liability is **DENIED**.
- c. That part of Corizon defendants' Motion seeking summary judgment on plaintiff's punitive damages claim against Wahabu is **GRANTED**.

- d. Those unopposed parts of Corizon defendants' Motion seeking summary judgment on plaintiff's claims of municipal liability and corporate negligence against Corizon are **GRANTED**.¹
3. Plaintiff's Eighth Amendment deliberate indifference and *Monell* claims are marked **WITHDRAWN WITH PREJUDICE** by agreement of plaintiff.

IT IS FURTHER ORDERED that a conference for the purpose of scheduling further proceedings will be conducted in due course.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.

¹ As stated in Section II(E) of the accompanying Memorandum, plaintiff does not oppose dismissal of his municipal liability and corporate negligence claims against Corizon as set forth in Counts Two and Three of the Amended Complaint. The Court concludes that under those circumstances the Motion for Summary Judgment should be granted as to those claims.